

# **Palestinian Initiatives for 2011 at the United Nations**

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## Summary

Many Members of Congress are actively interested in the question of possible U.N. action on Palestinian statehood. Congress could try to influence U.S. policy and the choices of other actors through the authorization and appropriation of foreign assistance to the Palestinians, the United Nations, and Israel and through oversight of the Obama Administration's diplomatic efforts. Changes to aid levels may depend on congressional views of how maintaining or changing aid levels could affect U.S. leverage and credibility in future regional and global contexts.

Officials from the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) are taking action in the United Nations aimed at solidifying international support for Palestinian statehood. On September 23, 2011, at the opening of the annual session of the General Assembly, PLO Chairman and PA President Mahmoud Abbas submitted an application for Palestinian state membership to the U.N. Secretary-General—on the basis of the armistice lines that prevailed before the Arab-Israeli War of 1967 (the “1967 borders”)—in order to bring about a Security Council vote on whether to recommend membership. Abbas cites a lack of progress on the peace process with Israel as the driving factor behind PLO consideration of alternative pathways toward a Palestinian state. The Obama Administration has indicated that it will veto a Security Council resolution in favor of statehood. In an alternate or parallel scenario, an existing U.N. member state supportive of PLO plans may sponsor a resolution in the General Assembly. Such a resolution could—with a simple majority vote—recommend the recognition of a Palestinian state based on the 1967 borders—either as-is or subject to future Israel-PLO negotiation—and change Palestine's permanent observer status in the United Nations from that of an “entity” to that of a “non-member state.” U.S., Israeli, and PLO diplomacy focused on Europe—particularly permanent Security Council members France and the United Kingdom—has been active and could further intensify as the time for a possible vote draws closer. Diplomacy also might currently or in the future include negotiations regarding the venue for, and the timing and wording of, potential resolutions or other actions on Palestinian statehood. Additionally, action by U.N. specialized agencies such as UNESCO to grant membership to a Palestinian state is possible.

This report provides information on the U.N. framework and process for options being discussed, including overviews of the following topics: the United Nations and recognition of states, observer status in the United Nations, and the criteria and process for United Nations membership. The report also analyzes the prospects for avoiding further U.N. action by reaching an Israel-PLO agreement to resume negotiations, as well as the possibility of a compromise U.N. resolution that could set forth parameters for future Israeli-Palestinian negotiations but stop short of addressing the question of Palestinian statehood beyond expressing aspirations. It is difficult to predict the potential future implications of U.N. action on Palestinian statehood. Some observers speculate that tightened Israeli security with respect to the West Bank and Gaza and popular unrest or civil disobedience among Palestinians could ensue, depending on various scenarios. Although Abbas maintains that he seeks an eventual return to U.S.-backed Israel-PLO negotiations on a more equal basis, an upgrade of the Palestinians' status at the U.N. also could facilitate subsequent efforts to apply greater pressure on Israel, especially if the PLO gains enhanced ability to present grievances in international courts—such as the International Court of Justice (ICJ) or International Criminal Court (ICC). Whether U.N. action or its aftermath would make Israel more or less willing to offer concessions in a negotiating process remains unclear, especially in light of ongoing regional political change and the volatility and possible deterioration of Israel's political and military relationships with Egypt and Turkey.

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## Overview of Palestinian Initiative and Congressional Interest<sup>1</sup>

Palestine Liberation Organization (PLO) Chairman and Palestinian Authority (PA) President Mahmoud Abbas cites a lack of progress on the two-decades-old peace process with Israel as the driving factor behind current PLO/PA<sup>2</sup> consideration of alternative pathways toward a Palestinian state.<sup>3</sup> In recent months, PLO and PA officials have actively worked to obtain more widespread international recognition of Palestinian statehood in the West Bank (including East Jerusalem) and the Gaza Strip. Over 100 countries have recognized the state of Palestine that the PLO declared unilaterally in 1988. No North American or Western European governments that provide significant financial support to the PA and are influential in the Middle East have recognized the 1988 claim, and the current Palestinian initiative has raised new questions about the positions of these third parties.<sup>4</sup>

PLO officials are pursuing action in the United Nations (U.N.) aimed at solidifying international support for Palestinian statehood, and they appear to enjoy support from the Palestinian public and several international institutions for their efforts. Proponents of these initiatives at the U.N. support the timing of their efforts by citing both the plan of PA Prime Minister Salam Fayyad to reach “de facto statehood” by August 2011<sup>5</sup> through strengthening PA institutions and economic

<sup>1</sup> For additional information and analysis on this subject, including various U.N. scenarios, the possible positions of various international actors, implications for future action in international courts and forums, examination of the question of Palestinian statehood under international law, and prospects for the resumption of Israeli-Palestinian negotiations, see International Crisis Group, *Curb Your Enthusiasm: Israel and Palestine After the UN*, Middle East Report No. 112, September 12, 2011; David Makovsky, “The Palestinian Bid for U.N. Membership: Rationale, Response, Repercussions,” Washington Institute for Near East Policy, September 2011; Ziad J. Asali, “Train Wreck in Turtle Bay,” *foreignpolicy.com*, September 8, 2011; Daniel Levy, “A Palestinian Autumn in New York—what to expect at the U.N.,” *mideast.foreignpolicy.com*, September 14, 2011; Arabella Thorp and Ben Smith, “Palestinian statehood,” House of Commons Library Standard Note, August 11, 2011, available at <http://www.parliament.uk/briefing-papers/SN06051>.

<sup>2</sup> The PLO is the internationally-recognized representative of the Palestinian people. The PA was created pursuant to various Israel-PLO agreements during the Oslo process in the 1990s as the organ of governance for limited Palestinian self-rule in the West Bank and Gaza Strip. Officially, the PLO represents the Palestinian national movement in international bodies, including the United Nations. However, Palestinian efforts to garner international support for statehood are referred to in this overview to the report as “PLO/PA” efforts because Mahmoud Abbas leads both the PLO and the PA, because some other PA officials (including Foreign Minister Riad Malki) have been publicly involved in the efforts, and because one could argue that the territorial writ of the PA involves it in any issue pertaining to the possible establishment of a Palestinian state within provisional or permanent borders. For the remainder of this report, references to “PLO” initiatives in the United Nations regarding statehood will be construed as referring both to PLO and PA participation, to the extent it exists.

<sup>3</sup> Palestinian and Arab critics of U.S. policy argue that the failure of the Obama Administration to limit Israeli settlement activity in the West Bank and some areas of Jerusalem and the U.S. veto of a draft Security Council resolution in February 2011 that would have designated Israeli settlements as illegal are the latest manifestations of a pattern that they perceive shows that the United States is either an ineffectual interlocutor or biased toward Israel—or both.

<sup>4</sup> In February 2011, the United States, casting the only vote in opposition, vetoed the U.N. Security Council draft resolution discussed in footnote 3. Arab governments and publics criticized the U.S. veto. The United Kingdom, France, and Germany were among the Security Council members that supported the draft resolution. Although the February draft resolution differs substantively from the PLO’s application for U.N. membership, the debates and positions taken by various Security Council members then might prefigure developments in the current context.

<sup>5</sup> Palestinian National Authority, *Palestine: Ending the Occupation, Establishing the State*, Program of the Thirteenth Government, August 2009, available at [http://www.mideastweb.org/palestine\\_state\\_program.htm](http://www.mideastweb.org/palestine_state_program.htm). A key passage from the document reads: “Out of respect for our citizens, and in recognition of their desire to live free and peaceful lives

development, and the goal President Obama enunciated in September 2010 for establishing a Palestinian state by 2011 as part of a negotiated two-state solution with Israel. According to a September 2011 poll by the Palestinian Center for Policy and Survey Research, 83% of Palestinians in the West Bank (including East Jerusalem) and Gaza Strip support “turning to the UN to obtain support for a Palestinian state.”<sup>6</sup> Reports in 2011 from the World Bank, the International Monetary Fund, and the Office of the U.N. Special Coordinator for the Middle East Peace Process stated that the PA has made institutional progress in areas traditionally deemed necessary for statehood,<sup>7</sup> but noted continued impediments: an underdeveloped private sector, constraints—mainly Israel-imposed—on movement and access respecting the West Bank and Gaza, fiscal problems related to a dearth of international donor funding, and lack of progress in negotiations.<sup>8</sup>

PLO Chairman/PA President Abbas initiated action at the opening of the annual U.N. General Assembly session that could lead to votes in both the Security Council and the General Assembly. On September 23, 2011, he submitted an application for Palestinian state<sup>9</sup> membership—on the basis of the armistice lines that prevailed before the Arab-Israeli War of 1967 (commonly known as the “1967 borders”)—to the U.N. Secretary-General, who is expected to submit the matter to the Security Council for its action on whether to recommend membership. A positive recommendation would require 9 “yes” votes out of 15 and no vetoes by any of the five permanent Council members. The Obama Administration has indicated that it will veto a Security Council recommendation resolution, but in the unlikely event the Council were to make a positive recommendation,<sup>10</sup> a two-thirds majority vote would be required in the General Assembly to admit a Palestinian state to the United Nations. To date, Security Council deliberations on the Palestinian membership application have remained at the committee level, and the Council could take additional weeks to review it.

In an alternate or parallel scenario, an existing U.N. member state supportive of PLO plans may sponsor a resolution in the General Assembly. A General Assembly resolution could recommend the recognition of a Palestinian state based on the 1967 borders—either as-is or based provisionally on those lines subject to future Israel-PLO negotiation—and change Palestine’s permanent observer status in the United Nations from that of an “entity” to that of a “non-member state” with a simple majority vote.<sup>11</sup> Deferring the establishment of permanent borders to future

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under national independence, we must answer their demand to see the fruits of the state-building project. Against this background, the Palestinian government is struggling determinedly against a hostile occupation regime, employing all of its energies and available resources, most especially the capacities of our people, to complete the process of building institutions of the independent State of Palestine in order to establish a de facto state apparatus within the next two years. It is time now for the illegal occupation to end and for the Palestinian people to enjoy security, safety, freedom and independence.”

<sup>6</sup> Margin of error of 3%. See September 21, 2011, press release on poll results at <http://www.pcpsr.org/survey/polls/2011/p41ejoint.html>.

<sup>7</sup> See a discussion of these areas in the section entitled “United Nations Membership: Criteria and Process.”

<sup>8</sup> Reports for each of these organizations to the Ad Hoc Liaison Committee for April and September of 2011 are available at their respective websites: <http://www.worldbank.org/ps>, <http://www.imf.org/wbg>, and <http://www.unsco.org>.

<sup>9</sup> The PLO is known as “Palestine” within the U.N. system, per General Assembly Resolution 43/177, adopted December 15, 1988.

<sup>10</sup> At least one U.S. official, the Obama Administration’s current Under Secretary of State for Political Affairs, has publicly stated (at her Senate nomination hearing) that the United States would veto a recommendation for a putative Palestinian state’s admission as a full U.N. member. Josh Rogin, “Wendy Sherman promises U.S. veto of Palestinian statehood at U.N.,” *thecable.foreignpolicy.com*, September 7, 2011.

<sup>11</sup> This status would be akin to that currently held by the Holy See (Vatican City), as documented in U.N. General

negotiations could help the Palestinians obtain more widespread support for U.N. action from European and other countries.

Additionally, the Executive Board of the U.N. Educational, Scientific and Cultural Organization (UNESCO) voted in early October 2011 to have UNESCO's General Conference consider the question of Palestinian membership—see “United Nations Educational, Scientific and Cultural Organization (UNESCO)” below for further discussion. A session of UNESCO's General Conference, at which a vote on Palestinian membership might occur, is scheduled to convene from October 25 to November 10, 2011. Admission of a Palestinian state to membership in UNESCO might trigger a legal requirement for the United States to discontinue contributions to UNESCO. Section 410 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) is a currently codified legal provision that states that the United States shall not make contributions to “any affiliated organization of the United Nations which grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood.” Given that the U.S. currently contributes roughly 22% of UNESCO's budget, discontinuance of U.S. contributions could impact the organization.

Many Members of Congress are actively interested in the question of possible U.N. action on Palestinian statehood. Congress could try to influence U.S. policy and the choices of other actors through the authorization and appropriation of economic and security assistance and through oversight of the Obama Administration's diplomatic efforts. The United States may be faced with a choice between backing its vigorous opposition to U.N. action with possible changes to U.S. aid to the PA, the U.N., and individual U.N. agencies; and taking more of a wait-and-see approach by reserving possible ultimatums for what follows the U.N. outcome both diplomatically and on the ground. Both approaches contain risks. By unsuccessfully mounting strong opposition to U.N. action, the United States may lose credibility and leverage with key actors. A restrained response, however, could lead these actors to perceive U.S. flexibility as weakness open to further exploitation. Either way, the outcome and aftermath of U.N. action on Palestinian statehood could present further challenges to U.S. efforts to pursue a negotiated two-state solution that secures U.S. interests, is acceptable to the Palestinians, guarantees Israel's security, and is credible to both parties and the international community.

## United Nations Framework and Process<sup>12</sup>

This section provides information on the U.N. framework and process for options being discussed, including the following topics: the United Nations and recognition of states, observer status in the United Nations, and criteria and process for gaining United Nations membership.

### Introduction

Following PLO Chairman Abbas's September 23 application—presented under the auspices of Abbas's claim to be “President of the State of Palestine”—to the U.N. Secretary-General for admission to membership in the United Nations, the Secretary-General circulated the application and a further letter to U.N. member states and to the U.N. Security Council and General Assembly.<sup>13</sup> On September 28, 2011, the Security Council referred the application to its

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Assembly Resolution 58/314. See **Appendix E** for a comparison of the respective current capacities of Palestine and the Holy See within the U.N. system.

<sup>12</sup> This section is authored by Marjorie Ann Browne, Specialist in International Relations.

<sup>13</sup> *Application of Palestine for admission to membership in the United Nations*. U.N. document A/66/371 – S/2011/592.

Committee on Admission of New Members “for examination and report.”<sup>14</sup> Since September 28, the Committee has been meeting, primarily at the “expert” level, to review and “examine” the application. These meetings have, as of October 20, 2011, been closed, informal, and not announced in the Daily Journal of the United Nations. Some international media sources have reported that the Committee will report on its deliberations to the Security Council by November 11, but when a vote might occur remains unclear.<sup>15</sup>

## The United Nations and Recognition of States

Under international practice, a state is generally understood to be “an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”<sup>16</sup>

The United Nations does not recognize states. States recognize states. The United Nations is “neither a State nor a Government and therefore does not possess any authority to recognize either a state or a government.”<sup>17</sup> On the other hand, some contend that admission to membership is an acknowledgement by an organization and its members that an entity has satisfied the requirement of statehood.<sup>18</sup>

## Observer Status in the United Nations

The current relationship of Palestine and the United Nations, as defined through a series of General Assembly resolutions, is as an “entity” having received a standing invitation to participate as an observer in the sessions and the work of the General Assembly and maintain permanent offices at Headquarters.<sup>19</sup> Since 1946, non-member states of the United Nations that were members of one or more specialized agencies have applied with the U.N. Secretary-General for the status of Permanent Observer. This practice originated with the application of Switzerland in 1946 for access as a Permanent Observer. It has been suggested that the General Assembly

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5 p.

<sup>14</sup> U.N. document S/PV.6624 (2 p.) and U.N. Press Release SC/10397 (1 p.).

<sup>15</sup> See, e.g., Jordana Horn, “Security Council to discuss Palestinian UN bid on Nov. 11,” *jpost.com*, October 21, 2011.

<sup>16</sup> *Restatement of the Law, Third, Foreign Relations Law of the United States*. Section 201. State Defined. The American Law Institute, 1987. [The ALI is a nonprofit membership association whose members are selected on the basis of professional standing. Its purpose, since its creation in 1923, is the “clarification and simplification of the law.”]

<sup>17</sup> “About UN Membership” at the United Nations website at <http://www.un.org/en/members/about.shtml>.

<sup>18</sup> Section 201. Comment “h. Determination of statehood.” in the *Foreign Relations Law Restatement, Third*, notes that “Whether an entity satisfies the requirements for statehood is ordinarily determined by other states when they decide whether to treat that entity as a state. Ordinarily, a new state is formally recognized by other states, see sec. 202, but a decision to treat an entity as a state may be manifested in other ways. Since membership in the principal international organizations is constitutionally open only to states, admission to membership in an international organization such as the United Nations is an acknowledgment by the organization, and by those members who vote for admission, that the entity has satisfied the requirements of statehood.” See *Restatement of the Law, Third, Foreign Relations Law of the United States*. Section 201. State Defined. St. Paul, Minn., The American Law Institute Publishers, 1987.

<sup>19</sup> See U.N. website under *About Permanent Observers: Non-member States and Entities*, at <http://www.un.org/en/members/nonmembers.shtml>. The General Assembly resolutions forming the basis of Palestine’s observer status are: A/RES/3237 (XXIX), November 22, 1974; A/RES/43/160A, December 9, 1988; and A/RES/52/250, July 7, 1998. See **Appendix E** for a comparison of the respective current capacities of Palestine and the Holy See within the U.N. system.

adopt a resolution on the status of Palestine in the United Nations that would change its observer status from “entity” to non-member state.

## United Nations Membership: Criteria and Process

### Criteria

Article 4 of the United Nations Charter establishes the parameters and criteria as well as the process for acquiring membership in the organization. Paragraph 1 of the Article reads

Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.<sup>20</sup>

Bruno Simma, in his two-volume article-by-article commentary on the Charter,<sup>21</sup> converts paragraph 1, above, into “five criteria for admission.”

- **“Membership ... is Only Open to States”**

Simma identifies the standard requirements for statehood, including recognition by other states and the capacity to conduct diplomacy with other states.

[A]n applicant would have to meet the formal requirements of the notion of statehood under international law, i.e., a defined territory, a permanent population, and an independent government.... In order to prove that an applicant ... was a State within the meaning of Art. 4(1) reference was also occasionally made to a certain measure of diplomatic intercourse or a certain degree of international recognition of the applicant State.<sup>22</sup>

- **“The Applicant State Must be ‘Peace-Loving’”**

The primary purpose of the United Nations organization, as stated in Article 1 of the Charter, is maintenance of international peace and security. This criterion

was partly a historical criterion and partly used to qualify a candidate’s current conduct.... The criterion ... has also served as a useful instrument of individual States’ membership policies.... With regard to the admission of the large number of new States resulting from decolonization, however, the criterion “peace-loving State” was of no practical importance at all.<sup>23</sup>

- **“Applicant States Must Accept the Obligations Contained in the Present Charter”**

Applicant states declare that they accept the obligations set forth in the Charter, a treaty. This would include the principles set forth in Article 2.<sup>24</sup>

- **“Applicants Must, in the Opinion of the Organization, be *Able and Willing* [emphasis added] to Carry out the Obligations Contained in the Charter”**

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<sup>20</sup> Other in “All other peace-loving states” refers to those states applying for membership in addition to the 51 original members of the Organization.

<sup>21</sup> Simma, Bruno, ed. *The Charter of the United Nations: a Commentary*. 2<sup>nd</sup> edition. New York, Oxford University Press, 2002. Bruno Simma is currently (since February 2003) a justice on the International Court of Justice, one of the principal organs of the United Nations.

<sup>22</sup> Simma, vol. 1, pp. 180-181.

<sup>23</sup> Simma, p. 182.

<sup>24</sup> Article 2 includes the obligation to settle international disputes by peaceful means and to refrain from the threat or use of force against the territorial integrity or political independence of any state.

While some observers might suggest that these two criteria—capacity and willingness—have been abandoned, they are in the Charter and might be raised during consideration for membership.

Originally, it was intended that States should be precluded from membership of the UN if they fell below an objective minimum standard of resource endowment necessary for effective compliance with such obligations .... In this respect, the admissions practice has shown a high measure of flexibility. \*\*\* With the open admission to the UN in the second phase of its development, the requirement of the ability to carry out the obligations of the Charter has become practically irrelevant as a membership test.

Regarding the subjective criterion of willingness to carry out the obligations of the Charter, the GA suggested the following indicators: maintenance of friendly relations with other States; fulfillment of international obligations; and the reputation of States concerned for being prepared to utilize procedures of peaceful dispute settlement (GA Res. 506A (VI), Feb. 1, 1952).<sup>25</sup>

## **Process**

### ***The Security Council***

Both the U.N. Security Council and General Assembly are involved in the process for consideration of applications for U.N. membership. According to paragraph 2 of Article 4 of the U.N. Charter,

The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

The details of the process are set forth in the rules of procedure of the Security Council and the General Assembly. Applications for membership are submitted by the requesting state to the U.N. Secretary-General, who forwards them to both the Assembly and the Council. In accordance with Rules 58 through 60 of the *Provisional Rules of Procedure of the Security Council*, the applicant state includes a declaration that “it accepts the obligations contained in the Charter.” After receipt of the application, the Council President usually refers the application to the Council Committee on the Admission of New Members for its consideration.<sup>26</sup> After the Council Committee completes its review of the application, it submits a report, with recommended resolution language back to the Council, which takes up the matter in a formal meeting. Decisions on membership applications are subject to veto by any of the five permanent members of the Council. If the Council decides to recommend the state for admission, it adopts a resolution of recommendation that is forwarded in a report to the General Assembly, with a complete record of the discussion.<sup>27</sup> The Council, in recent years, has also issued a presidential statement on its action. If the Council decides not to recommend the state for admission to U.N. membership, it

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<sup>25</sup> Simma, pp. 183-184.

<sup>26</sup> In accordance with Rule 59, “Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each member of the Security Council shall be represented. The committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly or, if a special session of the General Assembly is called, not less than fourteen days in advance of such session.” Note: a special session of the Assembly is different from an emergency special session of the Assembly.

<sup>27</sup> Rule 60 of the *Provisional Rules of Procedure of the Security Council*.

shall, in accordance with Rule 60, submit a special report to the General Assembly with a complete record of the discussion.

### ***The General Assembly***

Rule 136 of the *Rules of Procedure of the General Assembly* states that if the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is “a peace-loving State” and is “able and willing” to carry out the obligations contained in the Charter. The Assembly decides, by a two-thirds majority of the members present and voting, on the state’s application for membership. Membership becomes effective on the date on which the General Assembly adopts the resolution on admission.<sup>28</sup>

If the Security Council has not recommended the applicant state for membership or postpones its consideration of the application, then Assembly Rule 137 provides that the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, along with a full record of the discussion in the Assembly, for further consideration and recommendation or report.

**Appendix A** provides information on the process for three recently admitted states.<sup>29</sup> It includes document numbers so that a reader might examine them.

### ***Advisory Opinion of the International Court of Justice (ICJ)***

Can the General Assembly admit a state to membership in the United Nations without a prior Security Council resolution recommending admission? That, in essence, was the question placed before the International Court of Justice (ICJ) in 1949, in response to the persistent inability of the Security Council, between 1946 and 1949, to recommend admission of a number of states. During this time, the USSR exercised its veto in 23 votes on membership applications involving at least nine states.

In November 1949, the General Assembly, in an effort to determine if an alternative approach was possible, requested the ICJ, or World Court, to provide an advisory opinion on the following question:

Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly, when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?

On March 3, 1950, the World Court, in its advisory opinion to the Assembly, answered the question in the negative, by 12 votes to 2.<sup>30</sup>

Some have argued that Security Council failure to recommend Palestine for U.N. membership could be circumvented by taking the issue to the General Assembly, under the Uniting for Peace Resolution (General Assembly Resolution 377 A (V)). The aforementioned World Court advisory opinion appears to refute use of that approach, which was intended to be applied in instances

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<sup>28</sup> Rule 138 of the *Rules of Procedure of the General Assembly*.

<sup>29</sup> **Appendix A.** Timeline and Documentation for Three Recently Admitted Member States.

<sup>30</sup> International Court of Justice, Advisory Opinion, Competence of the General Assembly for the Admission of a State to the United Nations (1950). Year Book of the United Nations, 1950, pp. 409-413. See International Court of Justice website at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=gaun&case=9&k=31>.

involving maintenance of international peace and security. See **Appendix B** for further discussion.<sup>31</sup>

## Palestinian Initiatives in U.N. Specialized Agencies<sup>32</sup>

### Introduction

There are currently 17 specialized agencies in what is known as the United Nations system. These are “legally independent international organizations with their own [constitutions,] rules, membership, organs and financial resources” that have a “specialized agency” arrangement or agreement with the United Nations under Article 57 of the United Nations Charter.<sup>33</sup> While the International Atomic Energy Agency (IAEA) is included in this count of 17, it is not a specialized agency having been created by a resolution of the U.N. General Assembly. However, IAEA

operates like a specialized agency. The unique feature is that IAEA reports to the General Assembly and when appropriate to the Security Council as well as to ECOSOC on matter[s] within ECOSOC’s competence. The specialized agencies report to ECOSOC.<sup>34</sup>

A review of the membership requirements set forth in the constitutions of 13 of these agencies shows a range of provisions.<sup>35</sup> In eleven instances, membership in the United Nations gives a state access to membership in the agency without having to have its admission approved by the membership of the agency (ICAO, IFAD, ILO, IMO, ITU, UNIDO, UPU, WHO, WIPO, WMO, and UNESCO—see textbox below for the agencies’ full names). Of these, three agencies also provide membership, without a vote, to member nations of any specialized agency (IFAD, UNIDO, and WIPO). Two agencies require some process of voting for admission to membership (FAO and the UNWTO). The World Tourism Organization (UNWTO) requires a two-thirds vote of its General Assembly for admission to membership. However, an amendment to Article 5 of its Statute, adopted in 2005 but not yet in force, would have membership open to all states that are U.N. members.

The United States is not a member of UNIDO or UNWTO.

#### List of United Nations Specialized Agencies with Abbreviations

International Labor Organization (ILO)  
Food and Agriculture Organization (FAO)  
United Nations Educational, Scientific and Cultural Organization (UNESCO)  
International Civil Aviation Organization (ICAO)

<sup>31</sup> **Appendix B.** The Uniting for Peace Resolution.

<sup>32</sup> This section was prepared by Marjorie Ann Browne, Specialist in International Relations.

<sup>33</sup> The language in quotes is taken from *The UN System*, on the website of the United Nations System Chief Executives Board, at <http://www.unsceb.org/ceb/about/un>. Article 57 of the Charter: “1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63 [deals with the U.N. Economic and Social Council (ECOSOC)]. 2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.”

<sup>34</sup> *The UN System*, on the website of the United Nations System Chief Executives Board, at <http://www.unsceb.org/ceb/about/un>.

<sup>35</sup> The agencies not yet reviewed include the International Bank for Reconstruction and Development [World Bank], International Monetary Fund, International Finance Corporation, and the IAEA.

International Bank for Reconstruction and Development (IBRD)  
International Monetary Fund (IMF)  
Universal Postal Union (UPU)  
World Health Organization (WHO)  
International Telecommunication Union (ITU)  
World Meteorological Organization (WMO)  
International Finance Corporation (IFC)  
International Maritime Organization (IMO)  
World Intellectual Property Organization (WIPO)  
International Fund for Agricultural Development (IFAD)  
United Nations Industrial Development Organization (UNIDO)  
World Tourism Organization (UNWTO)  
International Atomic Energy Agency (IAEA)

## United Nations Educational, Scientific and Cultural Organization (UNESCO)

### *Membership Process*

Article II (paragraph 1) of the UNESCO Constitution provides that membership in the United Nations “shall carry with it the right to membership in UNESCO.” Paragraph 2 of Article II states that states not members of the United Nations may be admitted to UNESCO membership, upon recommendation of the UNESCO Executive Board, by a two-thirds majority vote of the UNESCO General Conference.<sup>36</sup>

The PLO, or “Palestine,” applied for membership in UNESCO in April 1989.<sup>37</sup> The response of both the Executive Board and the General Conference at that time and in intervening years, until October 2011 (see below), has been to defer consideration of the application and to refer the agenda item to the next session of the Executive Board and General Conference.<sup>38</sup>

### *Recent and Prospective Action*

On October 5, 2011, the UNESCO Executive Board, by a roll call vote of 40 in favor, 4 against, and 14 abstentions, decided to recommend that the General Conference of UNESCO admit Palestine as a member of UNESCO. The UNESCO General Conference convenes its 36<sup>th</sup> session October 25 through November 10, 2011 and may be expected to act on the Board decision during that meeting. The official text of the Board decision is not yet available on the UNESCO website but the following text (see textbox below) was provided by UNESCO through its Liaison Office to the United Nations.

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<sup>36</sup> Rule 50 of the Rules of Procedure for the UNESCO Executive Board provides that most decisions by the Board be taken by a simple majority of the members present and voting. The two-thirds majority vote in the Executive Board is limited to certain cases specified in Rule 51, not including recommendations for membership.

<sup>37</sup> Letter dated April 27, 1989 to the Director-General of UNESCO by Mr. Yasser Arafat. UNESCO document 131 EX/45, dated May 18, 1989. The United States was not at the time a member of UNESCO. During 1989, Palestine also applied for membership in the World Health Organization.

<sup>38</sup> The UNESCO General Conference meets every other year; the Executive Board meets at least two times a year. Copies of UNESCO documentation from 2009 and of the application in 1989 may be obtained from Marjorie Ann Browne of CRS.

### The UNESCO Executive Board Decision and Vote

#### The Decision:

“The Executive Board,

1. Considering the request for admission of Palestine to UNESCO submitted in 1989, and reiterated at each General Conference,
2. Having noted that Palestine accepts UNESCO's Constitution and is ready to fulfil the obligations which will devolve upon it by virtue of its admission and to contribute towards the expenses of the Organization,
3. Noting that the status of Palestine is the subject of the ongoing deliberations at the United Nations in New York,
4. Considering Article II, paragraph 2, of UNESCO's Constitution which stipulates that: *“... States not members of the United Nations Organization may be admitted to membership of the Organization, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference”*,
5. Recommends that the General Conference admit Palestine as a member of UNESCO.”

#### The Vote:

Yes (40): Algeria, Argentina, Bangladesh, Belarus, Burkina Faso, Chile, China, Congo, Cuba, Democratic Republic of the Congo, Egypt, El Salvador, Ghana, Grenada, Haiti, India, Kazakhstan, Kenya, Kuwait, Madagascar, Malaysia, Mongolia, Morocco, Niger, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, Sri Lanka, Syrian Arab Republic, Democratic Republic of Tanzania, Tunisia, Uzbekistan, Venezuela, Viet Nam, Zambia, Zimbabwe

No (4): Germany, Latvia, Romania, United States

Abstentions (14): Barbados, Belgium, Côte d'Ivoire, Denmark, France, Greece, Italy, Japan, Korea, Monaco, Slovakia, Spain, St. Lucia, Poland

## Tactical Possibilities During the U.N. Process

The following discussion sets forth various possibilities regarding the nature of potential U.N. action or alternatives to such action. Security Council action has begun, but even so, continuing diplomacy might lead to deferral, withdrawal, or modification of a potential resolution. Several actors—including the United States, the PLO, Israel, the European Union, Arab states, and Turkey—could influence developments.

The two main decisions for the PLO will be:

- In which U.N. venue(s) (the Security Council, the General Assembly, or both) will it pursue or continue to pursue its efforts?
- What will be the substance and wording of its request(s)?

## Compromise Resolution?

The United States, Israel, and other actors may seek to influence Palestinian decision-making on both questions. A compromise U.N. resolution might set forth parameters for future Israeli-Palestinian negotiations but stop short of addressing the question of Palestinian statehood beyond expressing aspirations. Such a compromise could prevent the United States from feeling compelled to veto a Security Council vote and risking a significant loss of goodwill among the Palestinian people and wider Arab world. On the other hand, a compromise approach, if perceived by Palestinians as U.S.- or Israeli-engineered coercion of PLO leadership, could lead to an even more negative Palestinian popular reaction—possibly stoked by Hamas or other parties

opposed to peace with Israel that have criticized the PLO's resort to the United Nations as futile—than U.S. opposition to U.N. action on statehood.<sup>39</sup>

## **Diplomacy Involving Europe**

It is unclear what leverage U.S. economic and security assistance might have on Palestinian decision-making (see “Congressional Options on Aid” below), but any such leverage is likely to be lessened in the event the Palestinians secure significant Western European, Gulf Arab, or other support or assurances of continued assistance. Thus U.S., Israeli, and PLO diplomacy focused on Europe—particularly permanent Security Council members France<sup>40</sup> and the United Kingdom—could intensify as the time for a possible vote draws closer. Such diplomacy also could become intertwined with negotiations regarding the venue for, and the timing and wording of, potential resolutions or other actions.

## **Possible Implications of U.N. Action for Future Israeli-Palestinian Developments**

The following discussion sets forth possible implications stemming from the process, outcome, or aftermath of U.N. action on Palestinian statehood. Such implications could include consequences for day-to-day interactions between Israelis and Palestinians, precedents that could lead to further international action on behalf of the Palestinians, and ramifications for possible future negotiations and internal Israeli and Palestinian political developments.

## **On-the-Ground Consequences and Further International Action**

Many proponents of emphasizing Palestinian claims to statehood acknowledge that greater international support through the United Nations or elsewhere will not resolve disputes between Israelis and Palestinians on core issues—borders, security, settlements, refugees, Jerusalem, water rights. Some observers express skepticism that international or unilateral action on the statehood question can transcend symbolism to significantly contribute to Palestinian independence. An upgrade in status would not confer characteristics of sovereignty that might strengthen the Palestinians' position in a negotiating context—such as an independent military capacity and control over territory and borders. Israel would probably retain control over East Jerusalem and overall control—despite the PA's limited self-rule—in the West Bank, while the Sunni Islamist group Hamas (a U.S.-designated Foreign Terrorist Organization) remains *de facto* ruler over the Gaza Strip.

If Israel continues to control developments on the ground in the West Bank and East Jerusalem, along with access to Gaza, the PLO might face questions about next steps from its own people. PLO officials have portrayed the possibility of U.N. action as consequential, if not ultimately

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<sup>39</sup> U.S. and Israeli pressure on Mahmoud Abbas led him to delay consideration of the so-called “Goldstone Report” regarding the 2008-2009 Gaza conflict (commonly known by its Israeli code name, “Operation Cast Lead”) at the U.N. Human Rights Council, for which he suffered heated criticism in domestic circles. Abbas is reportedly determined to avoid any incident related to the U.N. process pertaining to Palestinian statehood that could lead to similar damage to his domestic standing. International Crisis Group, *op. cit.*; Makovsky, *op. cit.*

<sup>40</sup> In a General Assembly speech on September 21, 2011, French President Nicolas Sarkozy expressed support for the idea of a General Assembly resolution designating Palestine as a “United Nations [non-member] observer state,” and for resuming Israeli-PLO negotiations within one month, with specific timelines for agreement on borders and security (six months), and all outstanding issues (one year). Sarkozy also said, “[W]ho doubts that a veto at the Security Council will engender a cycle of violence in the Middle East? Who doubts that?”

decisive, on the statehood issue. However, reduced levels of financial and political support from international patrons stemming from U.N. action could hinder possible subsequent efforts by Palestinian leaders to follow up such action with measures seeking to change Israel's posture in the West Bank and Gaza. It could also detract from their ability to rally popular and international support for these possible follow-up measures.

A resolution upgrading the permanent observer status of Palestine in the United Nations to a non-member state may also set in motion developments that eventually change how Israelis and Palestinians address their ongoing, fundamental disputes. If Palestinians and other international actors perceive that Palestinian political or legal claims have more basis for redress, altered expectations and calculations could lead to a new dynamic in how Palestinian and third parties relate to Israel with regard to core issues of the dispute. Possible developments—many of which Israel decries as connoting or possibly leading to its “delegitimization”—include greater levels of Palestinian civil disobedience or unrest; international boycott, divestment, and sanctions (BDS) movements; and an increase in grievances filed in international courts concerning Israeli actions—such as the International Court of Justice (ICJ)<sup>41</sup> and the International Criminal Court (ICC)—and other forums. A General Assembly resolution purporting to recognize Palestinian statehood could strengthen the Palestinian case for membership in or greater access to some of these international courts and forums, but would not automatically confer such privileges or rights upon the Palestinians.<sup>42</sup> Yet, the possibility of Palestinian state membership in UNESCO might foreshadow future developments.<sup>43</sup>

Some PLO leaders have stated that following acknowledgment of even limited Palestinian sovereignty, aspects of Israeli control over the West Bank and Gaza would constitute a “state occupying another state.” This argument is presumably advanced in order to increase international pressure on Israel to reduce its presence and military control over the territories. Yet, some international actors might reject this argument, particularly if the state's borders have not been definitively established in the Security Council. Israel is likely to reject it under any circumstances.

<sup>41</sup> Only states may bring contentious cases to the ICJ. Under Article 93 of the U.N. Charter, all U.N. members are *ipso facto* parties of the Statute of the International Court of Justice. However, states that are not U.N. members may only become parties upon recommendation by the U.N. Security Council. Accordingly, unless granted U.N. membership, it does not appear that the Palestinians could become a non-member party to the ICJ statute absent Security Council approval, even presuming that the Palestinians were deemed to satisfy the conditions for recognition as a state. See U.N. Charter, art. 93(2) (“A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.”).

<sup>42</sup> A September 2011 International Crisis Group report provided details on possible routes open to the Palestinians for availing itself of the ICC's jurisdiction and that of other international bodies. The report also stated: “[T]he ICC looms largest, for Palestinians, for Israel and for the U.S. That is because it affirms criminal responsibility of *individuals* [emphasis original] and because Rome Statute parties are legally obliged to enforce [the ICC's] rulings – both of which, together, lead Israeli officials to fear the repercussions of a hypothetical future adverse finding.” International Crisis Group, op. cit. See also Makovsky, op. cit.

<sup>43</sup> At least one PA official has stated that if the Palestinians are granted membership in UNESCO, they will seek to have Bethlehem and its Church of the Nativity named as World Heritage sites, and possibly later to apply for similar status for Hebron and its Tomb of the Patriarchs. Israeli officials have complained of the possible politicization of preserving cultural heritage sites, perhaps because of the potential effect UNESCO designations could have on Israeli plans for parts of the West Bank and East Jerusalem. Jerusalem's Old City and its walls were designated a World Heritage site in 1981 at the request of Jordan.

## Back to Negotiations?

Abbas maintains that he still favors a U.S.-led negotiating process under the right conditions, and that U.N. action supporting Palestinian statehood could help bring Israel and the Palestinians to the bargaining table on a more equal footing.<sup>44</sup> Yet, pursuit of U.N. action on Palestinian statehood outside of negotiations could be interpreted as a lack of faith by the Palestinians in the ability and/or willingness of the United States to be an “honest broker” and guarantor of the peace process. Additionally, some analysts argue that the PLO’s pursuit of U.N. action on Palestinian statehood undermines prospects for resuming negotiations because it violates previous Israeli-PLO agreements that form the foundation for a peace process. See **Appendix C** for further analysis of this question. Still other analysts warn that nominal Palestinian sovereignty gained through unilateral or international means might serve possible Israeli interests in avoiding serious negotiations toward a two-state solution by relieving the sense of international urgency for action on the issue.<sup>45</sup>

On September 23, the same day Abbas submitted the application for Palestinian state membership in the U.N., the international Quartet (United States, European Union, United Nations Secretary-General, Russia) issued a statement that read in part:

The Quartet takes note of the application submitted by President Abbas on 23 September 2011, which is now before the Security Council.

The Quartet reaffirmed its statement of 20 May 2011, including its strong support for the vision of Israeli-Palestinian peace outlined by United States President Barack Obama.<sup>46</sup>

The Quartet recalled its previous statements, and affirmed its determination to actively and vigorously seek a comprehensive resolution of the Arab-Israeli conflict, on the basis of United Nations Security Council resolutions 242, 338, 1397, 1515, 1850, the Madrid principles, including land for peace, the Road Map and the agreements previously reached between the parties.

The Quartet reiterated its commitment to a just, lasting and comprehensive peace in the Middle East and to seek a comprehensive resolution of the Arab-Israeli conflict, and reaffirms the importance of the Arab Peace Initiative.

The Quartet reiterated its urgent appeal to the parties to overcome the current obstacles and resume direct bilateral Israeli-Palestinian negotiations without delay or preconditions. But it accepts that meeting, in itself, will not re-establish the trust necessary for such a negotiation to succeed. It therefore proposes the following steps:

1. Within a month, there will be a preparatory meeting between the parties to agree an agenda and method of proceeding in the negotiation.
2. At that meeting, there will be a commitment by both sides that the objective of any negotiation is to reach an agreement within a time frame agreed to by the parties, but not longer than the end of 2012. The Quartet expects the parties to come forward with comprehensive proposals within three months on territory and security, and to have made substantial progress within six months. To that end, the Quartet will convene an

<sup>44</sup> See Mahmoud Abbas, “The Long-Overdue Palestinian State,” *New York Times*, May 16, 2011. See also Yossi Alpher, “An opportunity for Israel,” *bitterlemons.org*, January 10, 2011.

<sup>45</sup> Hussein Agha and Robert Malley, “Who’s Afraid of the Palestinians?,” *New York Review of Books*, February 10, 2011.

<sup>46</sup> In speeches President Obama gave on May 19 and May 22, 2011 from which the Quartet seeks to draw starting points for future negotiations, he called for basing the borders of Israel and a future Palestinian state on the 1967 lines with mutually agreed swaps to establish secure and recognized borders for both states under the principle of “two states for two peoples.”

international conference in Moscow, in consultation with the parties, at the appropriate time.

Subsequent U.S. efforts to restart negotiations have led to plans for Quartet meetings with Israeli and Palestinian officials in late October to discuss an agenda and framework for potential future negotiations.

However, a resumption of negotiations may be unlikely unless the PLO drops its insistence on a halt to Israeli settlement building, which in turn is unlikely in light of Israeli bureaucratic progress in September and October toward new housing units for Jewish residents in disputed areas of East Jerusalem—over 1,000 in Gilo and approximately 1,800 for a new development in Givat Hamatos. These steps toward further construction triggered statements of protest from Palestinian officials, as well as from European Union foreign policy chief Catherine Ashton and U.N. Secretary-General Ban Ki-moon. U.S. State Department spokeswoman Victoria Nuland said that further construction in East Jerusalem would be “counterproductive to our efforts to resume direct talks between the parties.” Israeli newspaper *Ha’aretz* published an editorial on October 18, stating that “the creation of the new Jewish neighborhood will reduce the likelihood of reaching a peace agreement over Jerusalem that would allow for territorial contiguity between the Palestinian communities. Givat Hamatos joins the plans for the expansion of Gilo and Har Homa to complete the ring that will cut off East Jerusalem completely from the southern West Bank.”<sup>47</sup>

Moreover, even if negotiations resume, their prospects remain uncertain, if not dim. The unwillingness of Hamas to recognize Israel’s right to exist and renounce violence further complicates matters. Israel and Hamas remain unwilling to negotiate directly with one another, and Israelis and Palestinians appear unwilling to compromise on conflicting positions concerning the claims of Palestinian refugees and the status of Jerusalem.

## **Israel’s Reaction**

Broad international support for Palestinian statehood could amplify Israelis’ concerns about their own security, particularly in view of ongoing political change in the surrounding Arab world and the volatility and possible deterioration of Israel’s political and military relationships with Egypt and Turkey. Israeli threat perceptions could lead to greater flexibility on its positions on some of the core issues expected to be resolved in a final-status Israel-PLO peace agreement, although the political climate in Israel makes this unlikely. The rationale, espoused by commentators and some former Israeli leaders commonly identified with the left and center of the political spectrum, would be that time for reaching a deal with the Palestinians is running out, as changes in the region lead Palestinian leaders and Arab state governments to show greater responsiveness to popular anti-Israel sentiment, and that negotiating peace is Israel’s best chance to ensure its long-term security.<sup>48</sup>

Israeli leaders might, instead, be more likely to become less flexible in negotiations due to calculations that Israeli concessions are likely to embolden—not assuage—Palestinians and other Arabs, encouraging them to seek greater gains at Israel’s expense. Many Israelis, including many or most in the ruling coalition of Prime Minister Binyamin Netanyahu’s government, see the wave of change in the Arab world, and especially in Egypt, as a repudiation of the logic of trading land for peace, and as contributing to an unpredictable environment that merits caution, not concessions. If these views prevail, Israel might conclude that its best options lie in using its military and other strategic assets to shape desired outcomes either unilaterally or in concert with

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<sup>47</sup> “A boon to Hamas at Fatah’s expense,” *Ha’aretz*, October 18, 2011.

<sup>48</sup> See, e.g., Ehud Olmert, “Peace Now, or Never,” *New York Times*, September 21, 2011.

regional and international allies and supporters. Possible specific Israeli responses may include, among others:

- withholding transfer revenue (taxes and customs Israel collects on behalf of the PA) that constitutes nearly two-thirds of the PA's budget;
- increasing construction and approval of Israeli settlements and infrastructure in the West Bank and East Jerusalem; and
- tightening security in and around the West Bank and Gaza.<sup>49</sup>

## Internal Palestinian Developments

Although the PLO is internationally recognized as the sole representative of the Palestinian people, the nature, outcome, and aftermath of U.N. action aimed at advancing the cause of Palestinian statehood could have a significant effect on internal Palestinian developments, which would in turn affect the Palestinians' dealings with Israel and the international community. The following questions could become pertinent:

- Will Mahmoud Abbas and his PLO/PA/Fatah colleagues and possible successors be willing and able to drive the Palestinian agenda toward a negotiated peace with Israel, or will past experience, regional trends, and popular sentiment compel them to pursue alternatives?
- Will efforts by Fatah and Hamas to form a consensus PA government and reunite the West Bank and Gaza under limited self-rule resume in light of their May 2011 agreement? What form might these efforts take?
- Could the outcome of international or unilateral action contribute to internal challenges to Fatah-led PA leadership in the West Bank and/or Hamas rule in Gaza? What are the relative risks of uprisings fed by changed popular expectations or the actions of organized militant groups?
- If a Palestinian entity claims or receives greater international recognition of its sovereignty over the West Bank, Gaza, and East Jerusalem on the basis of the 1967 lines, how might the rights and privileges of Palestinian refugees and other diaspora members living outside the 1967 borders be affected?<sup>50</sup>

Many observers believe that Hamas was at least partly motivated to agree to the October 2011 exchange of captured Israeli Sergeant Gilad Shalit for roughly 1,000 Palestinian prisoners by its desire to regain domestic and regional prestige that Abbas and the PLO have been receiving for proceeding with U.N. initiatives while facing concerted U.S. and Israeli opposition.

## Congressional Options on Aid

### Background on U.S. Aid to the Palestinians

Many observers point to signs of progress with PA security capacities and West Bank economic development, along with greater Israeli cooperation, as indications that U.S. aid is serving its

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<sup>49</sup> Makovsky, op. cit.

<sup>50</sup> Guy Goodwin-Gill, *Opinion Re The Palestine Liberation Organization, the future State of Palestine, and the question of popular representation*, August 2011, available at <http://s3.documentcloud.org/documents/238962/final-pdf-plo-statehood-opinionr-arb.pdf>. Goodwin-Gill is a British barrister and a senior research fellow at All Souls College, Oxford University.

purpose. It is less clear whether the progress they cite can be made self-sustaining and will be useful in promoting a broader political solution, and whether the level of Israeli cooperation is sufficient in forwarding both these goals. For a description of U.S. aid programs, see CRS Report RS22967, *U.S. Foreign Aid to the Palestinians*, by Jim Zanotti.

Ultimately, the ability of U.S. aid to influence Palestinian political decisions depends on some level of Palestinian popular recognition that U.S. policies and assistance promote Palestinians' long-term interests. PA willingness to support U.S.-sponsored efforts to counter Hamas and to reform internal Palestinian political and economic structures could recede as well unless Palestinians believe that the United States is both willing and able to support their quest for self-determination. Continued active U.S. opposition to U.N. action on Palestinian statehood—particularly a possible U.S. veto in the U.N. Security Council—could cast further doubt among Palestinians (possibly along with other international actors) that the United States is an effective partner, and thus may undermine any potential leverage provided by U.S. aid programs. Bottom-up political pressure, along with frustration at the lack of progress over the past several years, might influence some leaders who once supported U.S. priorities to change course. Close Abbas advisor Yasser Abed Rabbo, anticipating U.S. opposition to U.N. action, said in September 2011:

This shows not only disdain for the Palestinian position, but also scorn for what is happening in the Arab world: a revival seeking justice for the Arab peoples and the region as whole.<sup>51</sup>

The prospect of a peace process with no end in sight could intensify the jockeying between and among Israelis and Palestinians for alternatives to a two-state solution, perhaps leading ultimately to greater conflict. Also, the attention and resources devoted to reform and to strengthening anti-Hamas groups in the West Bank could widen divisions between the two Palestinian territories, given perceptions that residents of the Gaza Strip—almost totally dependent on external assistance and illicit economic activity—are being neglected, left behind, or perhaps even targeted. This could lead to heightened Palestinian resentment of all parties promoting the peace process.

## **Possible Changes to Aid to the Palestinians and Contributions to the United Nations**

Some Members of Congress are questioning the continuation of U.S. budgetary, security, and/or developmental assistance to the Palestinians due to uncertainty over possible contingencies. Both the House of Representatives (H.Res. 268) and Senate (S.Res. 185) passed resolutions in the summer of 2011 questioning the continuation of U.S. aid to the PA or to Palestinians in general in the event the PLO appeals to the United Nations, other international bodies or forums, and/or foreign governments for recognition of statehood or similar diplomatic support.<sup>52</sup>

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<sup>51</sup> Joel Greenberg, "Israel warns Palestinians on U.N. statehood bid," *Washington Post*, September 15, 2011.

<sup>52</sup> H.Res. 268 passed on July 7, 2011, by a vote of 407-6, and S.Res. 185 passed on June 28, 2011, by unanimous consent. The eighth "resolved" clause in H.Res. 268 "affirms that Palestinian efforts to circumvent direct negotiations and pursue recognition of statehood prior to agreement with Israel will harm United States-Palestinian relations and will have serious implications for the United States assistance programs for the Palestinians and the Palestinians [sic] Authority." The eighth "resolved" clause in S.Res. 185 reads that the Senate would "consider restrictions on aid to the Palestinian Authority should it persist in efforts to circumvent direct negotiations by turning to the United Nations or other international bodies."

## Congressional Holds on FY2011 Aid

Various Members of congressional committees with jurisdiction over the authorization and appropriation of U.S. aid to the Palestinians have reportedly placed informal holds on the obligation of the following two tranches of already-appropriated FY2011 assistance following August 18 congressional notifications by the Obama Administration:

- \$192.2 million in Economic Support Fund (ESF) project assistance for the West Bank and Gaza to be distributed through non-governmental organizations;<sup>53</sup> and
- \$147.6 million in International Narcotics Control and Law Enforcement (INCLE) non-lethal assistance for PA security forces.<sup>54</sup>

Media reports and statements from Member offices indicate that Congresswoman Kay Granger, Chairwoman of the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs; and Congresswoman Ileana Ros-Lehtinen, Chairwoman of the House Foreign Affairs Committee have each placed holds on at least some portion of one or both tranches listed above.<sup>55</sup> Senator Richard Lugar, Ranking Member of the Senate Foreign Relations Committee, had placed a hold on both tranches, but the hold was lifted in early October 2011.<sup>56</sup> According to reports, the current holds on U.S. FY2011 assistance to the Palestinians are at least partly attributable to Members' uncertainty regarding the advisability of providing aid to the PA when it and the PLO are taking action in international forums to boost support for Palestinian statehood outside of negotiations with Israel. It is unclear how long congressional holds on FY2011 assistance to the Palestinians might last.<sup>57</sup>

Although the Administration also notified Congress on August 18 of its intent to obligate the final \$50 million of the total FY2011 authorized amount of \$200 million in direct budgetary assistance for the PA, this amount is not subject to a hold.<sup>58</sup> The *New York Times* reported in September 2011 that Israeli Prime Minister Binyamin Netanyahu "urged dozens of members of Congress visiting Israel [in August] not to object to the aid," at the Administration's request.<sup>59</sup>

<sup>53</sup> U.S. Agency for International Development FY2011 Congressional Notification #133, August 18, 2011.

<sup>54</sup> State Department FY2011 Congressional Notification, August 18, 2011.

<sup>55</sup> Mary Beth Sheridan, "Wasting no time in blocking Palestinian aid," *washingtonpost.com/blogs/checkpoint-washington*, October 4, 2011. According to this report, Congresswoman Granger's hold does not apply to INCLE security assistance.

<sup>56</sup> CRS correspondence with Senate Foreign Relations Committee staffer, October 6, 2011.

<sup>57</sup> Congressional holds on foreign aid are not legally binding on the Administration. However, since the late 1970s/early 1980s, the Administration has generally deferred to holds placed by Members of pertinent committees as part of a process by which the executive branch consults with Congress to provide it with information or otherwise address committees' concerns prior to obligating funds subject to a hold. In 2007 and 2008, Congresswoman Nita Lowey, then Chairwoman of the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs, exercised holds partly in order to shape the conditions under which the United States could provide budgetary and security assistance to the West Bank-based PA following Hamas's takeover of Gaza and its dismissal from the PA government. "Splits Between U.S. and Europe Over Aid to Palestinians," *International Herald Tribune*, February 22, 2007; "Appropriator Wants Palestinian Authority Aid on Hold Until Accountability in Place," *CQToday*, March 4, 2008.

<sup>58</sup> U.S. Agency for International Development FY2011 Congressional Notification #133, August 18, 2011; Presidential Determination 2011-14, August 30, 2011, <http://www.whitehouse.gov/the-press-office/2011/08/30/presidential-memorandum-waiver-restriction-providing-funds-palestinian-a>.

<sup>59</sup> Jennifer Steinhauer and Steven Lee Myers, "House Republicans Discover a Growing Bond with Netanyahu," *New York Times*, September 21, 2011.

## **FY2012 Aid**

Draft legislation for FY2012 appropriations approved by the House Appropriations Subcommittee for State, Foreign Operations, and Related Programs in July 2011 would condition any direct budgetary assistance to the Palestinian Authority on the Secretary of State's certification that the PA is "not attempting to establish or seek recognition at the United Nations of a Palestinian state outside of an agreement negotiated between Israel and the Palestinians."<sup>60</sup> Draft legislation for FY2012 approved in September 2011 by the Senate Appropriations Committee (S. 1601, The Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2012) would prohibit direct budgetary assistance to the PA if "Palestine becomes a member or non-member state of the United Nations outside of an agreement negotiated between Israel and the Palestinians," but would also give the Secretary of State authority to waive the prohibition for national security reasons. S. 1601 also would require the Secretary of State to "submit to the Committees on Appropriations specific recommendations on appropriate actions to be taken with respect to the Palestine Liberation Organization's status in the United States, especially about the closing of its office, if Palestine seeks to become a member or non-member state of the United Nations outside an agreement negotiated between Israel and the Palestinians."

## **Looking Ahead**

If the PLO is even partly successful in its ongoing effort to gain U.N. and other international support for Palestinian statehood, one might conclude that it would be encouraged to continue with this approach and either discard or call into question the traditional "Oslo peace process" approach involving U.S.-supported negotiations with Israel. In that event, Congress would likely face a dilemma. If Congress continues to appropriate U.S. aid to the Palestinians as-is, the PLO might not have sufficient incentive to consider modifying its new approach to the peace process. The PLO might perceive that it has enhanced its leverage with both the United States and Israel and thus become emboldened to act with less regard for U.S. positions. Alternatively, if Congress elects to reduce or discontinue assistance, U.S. influence over future Palestinian policies and internal developments may decline. Such an approach may also increase PA reliance on aid either from European or from Gulf Arab sources, and might amplify Iran's influence by weakening the PA relative to Hamas.<sup>61</sup> The underlying political agendas of these sources could significantly diverge from U.S. interests with regard to issues such as maintaining Israel's security and promoting democratic values and civil liberties. Moreover, if possible cuts in U.S. aid contribute to an environment in which Israel-PA security cooperation erodes, the result could be an increased level of Israeli-Palestinian or regional violence and the further degradation of prospects for a negotiated two-state solution.

Witnesses from a September 14, 2011, hearing before the House Committee on Foreign Affairs, including Elliott Abrams (of the Council on Foreign Relations), who handled Israeli-Palestinian issues on the George W. Bush National Security Council, cautioned that an automatic and across-the-board cutoff of aid to the PA in the event of U.N. action might not serve U.S. interests—depending on the venue and substance of the possible action:

Some of the programs that are up for cutting are actually in our interest and the interest of Israel, such as the security programs....

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<sup>60</sup> Draft legislation at subheading "Economic Support Funds," fifth proviso, available at [http://appropriations.house.gov/UploadedFiles/FY12-SFOPS-07-25\\_xml.pdf](http://appropriations.house.gov/UploadedFiles/FY12-SFOPS-07-25_xml.pdf).

<sup>61</sup> Testimony of Jonathan Schanzer (of the Foundation for Defense of Democracies), September 14, 2011, House Foreign Affairs Committee hearing on U.S. aid to Palestinians.

The entire Palestinian Authority is not to blame for what the PLO-Fatah crew is planning in New York. I think the collapse of the P.A. would not be in our interest, or for that matter, Israel's or Jordan's. It might actually benefit Hamas and other terrorist groups....

[W]ait and see what President Abbas in his capacity as chairman of the PLO does. Does he go to the Security Council to force an American veto? That is very harmful for the United States.

What language does he put forth in his resolution? How bad is it, exactly? Does he try to get the General Assembly to pronounce on Jerusalem; on refugees, on borders? Does he go forward the next day to say, "I'm for negotiations," or is he to go forward the next day in the International Criminal Court? So you should keep some powder dry, I think.<sup>62</sup>

Some Members of Congress have proposed reducing or ceasing U.S. contributions to the United Nations or any U.N. agency that recognizes Palestinian statehood or accepts a putative Palestinian state as a member,<sup>63</sup> on top of currently codified legal provisions (P.L. 103-236 discussed above, and P.L. 101-246 discussed in **Appendix D**) that may require the discontinuance of such contributions. As possible precedent, Representative Ileana Ros-Lehtinen, chairwoman of the House Committee on Foreign Affairs, has cited threats to U.N. funding from the George H. W. Bush Administration that may have discouraged the General Assembly and U.N. agencies from recognizing the 1988 declaration of Palestinian statehood.<sup>64</sup> See **Appendix D** for information on congressional action from past instances since 1988 relating to unilateral or international efforts to advance the cause of Palestinian statehood.

## Conclusion

PLO diplomatic efforts in 2011 are unlikely to lead to U.N. membership for a putative Palestinian state because of a near certainty that the United States would veto a Security Council membership recommendation vote. However, most observers believe that the PLO has majority support for a possible General Assembly resolution that would upgrade Palestine's permanent observer status in the U.N. to that of a "non-member state." Additionally, action by U.N.-affiliated agencies such as UNESCO to grant membership to a Palestinian state is possible. The United States, Israel, and European countries are likely to focus on influencing Palestinian decisions on the venue of U.N. action and/or the substance and wording of a possible resolution—with special attention to the question of statehood and to the permanence or provisionality of borders along the 1967 lines.

The future implications of U.N. action on Palestinian statehood—beyond its potential symbolic value—are unclear. Although such action is unlikely to immediately resolve any of the core issues of the Israeli-Palestinian dispute, it may affect developments on the ground. For example, tightened Israeli security measures with respect to the West Bank and Gaza and popular unrest or civil disobedience among Palestinians could ensue. Although PLO Chairman/PA President Mahmoud Abbas maintains that he seeks an eventual return to U.S.-backed Israel-PLO

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<sup>62</sup> Testimony of Elliott Abrams, September 14, 2011, House Foreign Affairs Committee hearing on U.S. aid to Palestinians.

<sup>63</sup> H.R. 2457 (Palestinian Accountability Act); H.R. 2261 (To withhold United States contributions to the United Nations or a United Nations agency if the United Nations or such agency supports the recognition of an independent Palestinian state, and for other purposes); H.Res. 297 (Expressing the sense of the House of Representatives that the Secretary of State should withhold United States contributions to the regularly assessed biennial budget of the United Nations for purposes of the General Assembly of the United Nations if the General Assembly adopts a resolution in favor of recognizing a state of Palestine outside of or prior to a final status agreement negotiated between, and acceptable to, the State of Israel and the Palestinians).

<sup>64</sup> Remarks by Chairwoman Ileana Ros-Lehtinen from September 14, 2011, House Foreign Affairs Committee hearing on U.S. aid to Palestinians.

negotiations, chances for a meaningful resumption of talks remain dim. An upgrade to Palestinian statehood status at the U.N. could lead to subsequent efforts to apply greater political and international legal pressure on Israel to change its posture on the ground, especially if the PLO gains greater access to international courts—such as the ICJ or ICC—or other forums in order to bring action against Israel. Such legal action could focus on Israeli military and security practices and Israeli settlements and infrastructure in the West Bank and East Jerusalem. Israel has expressed concern that additional Palestinian access to such institutions will further expose Israeli military leaders to the types of war crimes charges that have become more common following Israel's military actions of the past decade—possibly affecting the military's morale and operational freedom.

U.N. action on Palestinian statehood or its aftermath may affect the willingness of Israel to offer concessions in a negotiating process, especially in light of ongoing, widespread change in the Arab world and the volatility and possible deterioration of Israel's political and military relationships with Egypt and Turkey. Nominal Palestinian sovereignty gained through U.N. action might serve Israeli interests by relieving the sense of international urgency for further action on the issue. If the U.N. outcome does not meet the expectations of the Palestinian people, the PLO could face internal challenges—from popular movements, Hamas, or other organized militant groups—to its continued control of the West Bank and status as the international representative of the Palestinian people.

Congressional decision-making on future budgetary assistance to the PA and other forms of aid could be tied to PLO efforts to pursue U.N. action, to the outcome of Security Council and/or General Assembly votes, to what follows the U.N. outcome both diplomatically and on the ground, some combination of these, or none of these. Resolution of these questions could depend on congressional views of how maintaining or changing aid levels could affect U.S. leverage and credibility in future regional and global contexts.

## Appendix A. Timeline and Documentation for Three Recently Admitted Member States<sup>65</sup>

Applicant State:	Switzerland	Democratic Republic of East Timor (Timor-Leste)	Republic of Montenegro
Application Submission:	Letter dated June 20, 2002; A/56/1009 – S/2002/801, dated July 24, 2002	Letter dated May 20, 2002; A/56/953 – S/2002/558, dated May 20, 2002	Letter dated June 5, 2006; A/60/890-S/2006/409, dated June 16, 2006
Security Council Committee Referral and Action: *	Referred, considered, and reported, July 24, 2002; S/2002/825, recommended unanimously	Referred to Committee, May 22, 2002; considered by Committee May 23, 2002. Reported, May 23, 2002, with unanimous recommendation (S/2002/566)	Referred to Committee, June 21, 2006 (S/PV.5471); considered by Committee, June 21, 2006. Reported, June 21, 2006, with unanimous recommendation (S/2006/425).
Security Council Consideration and Action:	Considered and recommended, without a vote, July 24, 2002 (S/PV. 4585); S/RES/1426 (2002). Also S/PRST/2002/23.	Considered and recommended, without a vote, May 23, 2002 (S/PV. 4542); S/RES/1414 (2002). Also S/PRST/2002/15.	Considered and recommended, without a vote, June 22, 2006 (S/PV.5473); S/RES/1691 (2006). Also S/PRST/2006/27.
General Assembly Consideration and Action:	Reported to the Assembly, July 24, 2002 (A/57/259). Considered by Assembly September 10, 2002 (A/57/PV. 1), A/RES/57/1, adopted by acclamation.	Reported to the Assembly, May 23, 2002 (A/57/258, dated July 25, 2002). Considered by Assembly September 27, 2002 (A/57/PV. 20), A/RES/57/3, adopted by acclamation.	Reported to the Assembly, June 22, 2006 (A/60/902, dated June 23, 2006). Considered by Assembly June 28, 2006 (A/60/PV.91), A/RES/60/264, adopted by acclamation.

**Source:** CRS, from underlying United Nations sources; this table was prepared before the United Nations admitted South Sudan to membership on July 14, 2011.

**Notes:** \* The Council refers the application to its Committee on New Members; this Committee is composed of a representative from each of the 15 members of the Council. For the texts of the documents cited in this Table, see the United Nations website at <http://documents.un.org/default.asp>; click on Welcome; then click on Simple Search.

<sup>65</sup> Authored by Marjorie Ann Browne, Specialist in International Relations.

## Appendix B. The Uniting for Peace Resolution<sup>66</sup>

Some observers have expressed the opinion that in the absence of positive Security Council action relating to an independent Palestine, such as a Council recommendation to the General Assembly on an application for U.N. membership by Palestine, the issue might be referred to the Assembly for approval of a membership application. This section briefly discusses the Uniting for Peace Resolution process and application, in light of the U.N. Charter's express requirement that Assembly consideration of an application for U.N. membership is predicated on prior favorable Council recommendation.

The General Assembly adopted Resolution 377 A (V) on November 3, 1950, as an option in the event that the Security Council was unable to act on a matter dealing with the maintenance of international peace and security. After military forces from North Korea invaded the Republic of Korea in June 1950, the Council recommended that U.N. member states "furnish such assistance ... as may be necessary to repel the armed attack and to restore international peace and security in the area." Adoption of S/RES/83 (1950) was possible because the USSR had boycotted meetings of the Council. However, from August on, a Soviet delegation was present at Council meetings and cast a negative vote on a U.S. draft resolution condemning the action by the North Korean authorities.<sup>67</sup>

In the resolution, the General Assembly

1. *Resolves* that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council the vote of any seven members, or by a majority of the Members of the United Nations;<sup>68</sup>

The aforementioned World Court advisory opinion (see "United Nations Membership: Criteria and Process" in the main body of the report) appears to refute use of the Uniting for Peace Resolution approach in connection with the possible admission of states to U.N. membership. The resolution was intended to be applied in instances involving maintenance of international peace and security.<sup>69</sup>

<sup>66</sup> Authored by Marjorie Ann Browne, Specialist in International Relations.

<sup>67</sup> For further discussion, see *Uniting for Peace*, by Christian Tomuschat, at the United Nations Audiovisual Library of International Law at <http://www.un.org/law/avl>. The Year Book of the United Nations, 1950, at <http://unyearbook.un.org/>; Select 1950 and see Chapter III. Political and Security Questions. This source also provides a detailed treatment of Council and Assembly action.

<sup>68</sup> A/RES/377 A (V) had parts A through E and an Annex amending the rule of procedure of the Assembly. Resolution 377 itself also had a part B and part C, in addition to part A. Operative paragraph 1, of Resolution 377 A is a primary element for Uniting for Peace. See list of Emergency Special Sessions of the General Assembly, with dates, how convened, and links to Resolutions adopted and Records of the Meetings, at <http://www.un.org/en/ga/sessions/emergency.shtml>.

<sup>69</sup> The process governing U.N. membership is set forth in Chapter II of the U.N. Charter, while the process set forth in the Uniting for Peace Resolution was prescribed in a U.N. General Assembly, governed by the function laid out in Chapter IV of the U.N. Charter.

## Appendix C. Possible Legal Implications of U.N. Action on Palestinian Statehood

### For Previous Israeli-PLO Agreements

Some Israeli analysts believe that PLO pursuit of a U.N. Security Council or General Assembly vote on Palestinian statehood violates or contradicts previous Israeli-PLO agreements. A May 2011 *Jerusalem Report* article stated that a former legal advisor to the Israeli Foreign Ministry is contending that “the Palestinians are in serious breach of the 1995 Oslo Interim Agreement, which set up the Palestinian Authority [PA], the presidency and the parliament, on the understanding that all remaining differences would be resolved through negotiations.”<sup>70</sup> As discussed below, Palestinian claims that Israel has breached the “Oslo agreements” also are possible.

The Interim Agreement and the 1993 Declaration of Principles,<sup>71</sup> two of the main Oslo agreements, both contemplated that Israel and the PLO would negotiate a “permanent settlement based on Security Council Resolutions 242 and 338,” both of which support the principle of Israel withdrawing from territories that its military occupied during the June 1967 war in exchange for “just and lasting peace” with its Arab adversaries. Article XXXI, Clause 7 of the Interim Agreement reads:

Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.

PLO pursuit or acceptance of a U.N. vote on Palestinian statehood for the West Bank and Gaza outside of an Israel-PLO negotiating context could be interpreted as contradicting the above clause. Israeli sources have argued that, by allowing the U.N. to vote on the issue rather than issuing its own unilateral declaration of statehood,<sup>72</sup> the PLO might seek to receive sovereignty for “Palestine” while maintaining that it is not taking active steps that constitute a breach of Article XXXI, Clause 7.<sup>73</sup>

Whether the PLO has an ongoing requirement to abide by the above clause and the rest of the Oslo agreements may be subject to debate. The PLO could argue that any requirement pertaining to negotiations that might have existed under the Oslo agreements no longer applies because the Oslo agreements contemplated that the transitional period under which negotiations would proceed and the PA would govern specified areas of the West Bank and Gaza Strip would “not exceed 5 years.” The continuing applicability of the agreements beyond the initial 5-year period is unclear; one could argue that the agreements remain in force unless explicitly terminated, or one could argue that they are no longer binding. Israel might argue that by continuing the PA’s

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<sup>70</sup> Leslie Susser, “Countdown to a State,” *Jerusalem Report*, May 23, 2011.

<sup>71</sup> The text of the Declaration of Principles is available at <http://www.bitterlemons.net/docs/dop.html>, and the text of the Interim Agreement is available at <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm>.

<sup>72</sup> The PLO did unilaterally declare Palestinian statehood in 1988, 5 years prior to the initial Oslo agreement. The declaration, however, did not identify the borders of the state with any degree of specificity.

<sup>73</sup> Dore Gold, “Countdown to September: Israel, the Palestinians, and the UN General Assembly,” Jerusalem Center for Public Affairs, May-June 2011, available at [http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=2&DBID=1&LNGID=1&TMID=111&FID=443&PID=0&IID=6969&TTL=Countdown\\_to\\_September:\\_Israel,\\_the\\_Palestinians,\\_and\\_the\\_UN\\_General\\_Assembly](http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=2&DBID=1&LNGID=1&TMID=111&FID=443&PID=0&IID=6969&TTL=Countdown_to_September:_Israel,_the_Palestinians,_and_the_UN_General_Assembly).

administrative duties in the West Bank and Gaza beyond the initial 5-year-period, the PLO has implicitly accepted the continuing applicability of the Oslo agreements in their entirety. This, however, also could lead to Palestinian claims—likely to be disputed by Israel—that Israel has breached obligations under the agreements. For example, Palestinians could allege that Israel sought to change the status of Gaza when it withdrew its military forces and settlers in 2005, that it failed to treat the West Bank and Gaza as a single territorial unit, or that continued building of settlements and infrastructure in the West Bank and East Jerusalem is tantamount to a change in status.

## For Previous U.N. Resolutions

A potential U.N. General Assembly resolution on Palestinian statehood could be seen as contrary to the letter or spirit of U.N. Security Council Resolutions 242 and 338 because these two resolutions are commonly seen as the foundational international legal basis for a negotiated “land-for-peace” peace process contemplated under the Oslo agreements (as discussed above). Recognizing Palestinian sovereignty within the 1967 borders in connection with a General Assembly resolution could be interpreted as satisfying the Palestinians’ claims to land without requiring them to make commitments for peace with Israel or otherwise address security considerations, and therefore as undermining UNSCRs 242 and 338. Because General Assembly resolutions, however, are generally seen as non-binding as a matter of international law, or at least less binding than Security Council resolutions, such a General Assembly resolution on Palestinian statehood might not legally conflict with the two UNSCRs in question.<sup>74</sup>

The PLO and other actors supportive of a General Assembly resolution could argue that pursuing Palestinian statehood does not conflict with “land-for-peace” principles because nominal sovereignty alone would not alter Israel’s control over lands beyond the 1967 borders. Mahmoud Abbas asserted in a May 2011 *New York Times* column that a sovereign Palestinian entity could actually be better positioned than the non-sovereign PA to negotiate a final land-for-peace compromise with Israel.<sup>75</sup> Analyzing the matter similarly, though from a different viewpoint, one prominent Israeli analyst stated that “Abbas’ move is aimed at shaping the political context of the diplomatic struggle between Israel and the Palestinians in the future in the Palestinians’ favor.... This is as much a struggle about political consciousness as it is about international law.”<sup>76</sup> Another prominent Israeli analyst has related the idea of potential international recognition of Palestinian statehood to the concept of an “independent Palestinian state with provisional borders and attributes of sovereignty” proposed by the United States and the other members of the Middle East Quartet (United Nations, European Union, Russia) in 2002-2003 in Phase II of the Performance-Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (“Roadmap”).<sup>77</sup>

<sup>74</sup> Additionally, some analysts might cite parallels between a potential U.N. General Assembly resolution on Palestinian statehood and General Assembly Resolution 181 from 1947, which proposed the partition of historic Palestine into a Jewish state and an Arab state and thus provided some basis for the establishment of the state of Israel in 1948. However, Resolution 181 was passed at a time when there were no Security Council resolutions pertaining to the establishment of internationally-recognized borders in historic Palestine. Also, Resolution 181 did not itself purport to establish sovereignty for the states it proposed forming, but rather left the question for the stakeholders in historic Palestine and the international community to resolve.

<sup>75</sup> Mahmoud Abbas, “The Long-Overdue Palestinian State,” *New York Times*, May 16, 2011.

<sup>76</sup> Gold, op. cit.

<sup>77</sup> Yossi Alpher, “Obama is deep into phase II,” *bitterlemons.org*, August 19, 2009, stating “While [the PLO] would seek international recognition of that state within the 1967 borders, in practical terms its borders would at least temporarily be defined by Oslo areas A and B and be provisional.”

## Appendix D. Congressional Action Regarding Palestinian Statehood: 1988-2000

Following the PLO's declaration of statehood in 1988, Congress included a section (Section 414) in the Foreign Relations Authorization Act for FY1990 and FY1991 (P.L. 101-246) that prohibited U.S. funding for the United Nations or any U.N. agency to the extent those forums accorded the PLO "the same standing as member states."

In the context of Yasser Arafat's threat to declare a state in May 1999 at the expiration of the initial five-year interim period of the Oslo Accords—which Arafat did not ultimately carry out—the House of Representatives (in March 1999) and Senate (in April 1999) passed H.Con.Res. 24, which contained the following three resolutions:

- The final political status of the territory controlled by the Palestinian Authority can only be determined through negotiations and agreement between Israel and the Palestinian Authority;
- Any attempt to establish Palestinian statehood outside the negotiating process will invoke the strongest congressional opposition; and
- The President should unequivocally assert United States opposition to the unilateral declaration of a Palestinian state, making clear that such a declaration would be a grievous violation of the Oslo accords and that a declared state would not be recognized by the United States.

In September 2000, in the context of another Arafat threat—also not carried out—to declare a state following the breakdown of U.S.-brokered Israel-PLO negotiations, and just prior to the outbreak of the second *intifada*, the House passed the Peace Through Negotiations Act of 2000 (H.R. 5272), which, if enacted as law, would have established the following provisions in the event of a subsequent PLO unilateral declaration of statehood:

- Downgrade to the status of the PLO's office in the United States;
- Prohibition on U.S. aid to a unilaterally declared Palestinian state, the Palestinian Authority, or any successor or related entity;
- Prohibition on U.S. program or project aid (except humanitarian aid) in the West Bank and Gaza Strip;
- Authorization of the President to reduce contributions to international organizations that recognize a unilaterally-declared Palestinian state; and
- Prohibition on use of funds to extend U.S. recognition to a unilaterally declared Palestinian state.

H.R. 5272 also sought to require the United States to oppose membership by a unilaterally declared Palestinian state in any international financial institution and to oppose any such institution's extension of loans or other financial or technical assistance to such a state.

## Appendix E. United Nations Observer Status—The Holy See and Palestine: A Comparison of Capacities<sup>78</sup>

The following table is intended to provide information on the capacities of observer status in the United Nations (U.N.) for the Holy See (sometimes referred to as the Vatican), which has non-member state observer status, and for Palestine, which is an entity with observer status. Originally, the Holy See gained permanent observer status in the U.N. General Assembly in 1964 when it established a permanent observer mission and requested access to the General Assembly from the U.N. Secretary-General. That status was and is listed in the Blue Book, the *Permanent Missions to the United Nations* publication.<sup>79</sup> The Palestine Liberation Organization, later designated by the General Assembly as Palestine within the U.N. system, was given observer status in 1974 and received enhanced capacities in successive Assembly resolutions. In 2004, the Assembly adopted a resolution on the Status of the Holy See in the United Nations, that gave the Holy See enhanced capacities that are nearly identical to those Palestine has received.<sup>80</sup>

**Table E-1. United Nations Observer Status—The Holy See and Palestine: A Comparison of Capacities**

Topics	The Palestine Liberation Organization/Palestine: entity	The Holy See: non-member State
Regular observer status		1964: permanent observer status, per request to the Secretary-General
Original designation as observer	General Assembly Resolution 3237 (XXIX), November 22, 1974:  Op Para 1. Invites the PLO to participate in the sessions and the work of the General Assembly in the capacity of observer;  Op Para 2. Invites the PLO to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;  Op Para 3. Considers that the PLO is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations;	

<sup>78</sup> Authored by Marjorie Ann Browne, Specialist in International Relations.

<sup>79</sup> See <http://www.un.int/protocol/bluebook.html>; click on Blue Book, see Sections II and III.

<sup>80</sup> One difference between the capacities of Palestine and the Holy See is the seating privileges accorded to each of them. See the next-to-last row in **Table E-1.** with the Topics heading of “Priority seating before other observers.”

Communications relating to work of the General Assembly issued as official documents	<p>General Assembly Resolution 43/160 A, December 9, 1988</p> <p>Op Para 1. Decides that the PLO...are entitled to have their communications relating to the sessions and work of the General Assembly issued and circulated directly, and without intermediary, as official documents of the Assembly;</p>	<p>A/RES/58/250, ANNEX</p> <p>5. The right to have its communications relating to the sessions and work of the General Assembly issued and circulated directly, and without intermediary, as official documents of the Assembly;</p>
Communications relating to work of all international conferences under Assembly auspices issued as official documents	<p>Op Para 2. Decides also that the PLO...are entitled to have their communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly of the United Nations issued and circulated directly, and without intermediary, as official documents of these conferences;</p> <p>Op Para 3. Authorizes the Secretariat to issue and circulate as official documents of the United Nations under the appropriate symbol of other organs or conferences of the United Nations, communications submitted directly, without intermediary, by the PLO..., on matters relative to the work of these organs and conferences;</p>	<p>6. The right to have its communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly issued and circulated directly, and without intermediary, as official documents of these conferences;</p>
Privileges and Immunities	<p>General Assembly Resolution 43/160 B, December 9, 1988</p> <p>Op Para 2. Calls once more upon the States concerned to accord to the delegations of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States and accorded observer status by international organizations [PLO], the facilities, privileges and immunities necessary for the performance of their functions in accordance with the provisions of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character;</p>	
PLO designation as "Palestine"	<p>General Assembly Resolution 43/177, December 15, 1988</p> <p>Op Para 1. Decides that, effective as of 15 December 1988, the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system, in conformity with relevant United Nations resolutions and practice;</p>	

Additional rights and privileges --- introductory paragraph	General Assembly Resolution 52/250, July 7, 1998 Op Para 1. Decides to confer upon Palestine, in its capacity as observer, and as contained in the annex to the present resolution, additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences;	General Assembly Resolution 58/314, July 1, 2004 Op Para 1. Acknowledges that the Holy See, in its capacity as an Observer State, shall be accorded the rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences as set out in the annex to the present resolution;
Participation in general debate	A/RES/52/250, ANNEX 1. The right to participate in the general debate of the General Assembly.	A/RES/58/314, ANNEX 1. The right to participate in the general debate of the General Assembly;
Inscription on list of speakers at any plenary Assembly meeting, after last member state speaker at the meeting	A/RES/52/250, ANNEX 2. Without prejudice to the priority of Member States, Palestine shall have the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting.	A/RES/58/314, ANNEX 2. Without prejudice to the priority of Member States, the Holy See shall have the right of inscription on the list of speakers under agenda items at any plenary meeting of the General Assembly, after the last Member State inscribed on the list;
Right of reply*	A/RES/52/250, ANNEX 3. The right of reply.	A/RES/58/314, ANNEX 4. The right of reply;
Points of order related to specific topic, but not to challenge a decision of the presiding officer	A/RES/52/250, ANNEX 4. The right to raise points of order related to the proceedings on Palestinian and Middle East-issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer.	A/RES/58/314, ANNEX 7. The right to raise points of order related to any proceedings involving the Holy See, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer;
Co-sponsor draft resolutions on specific topics, but not to call for a vote on such resolutions/decisions	A/RES/52/250, ANNEX 5. The right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues. Such draft resolutions and decisions shall be put to a vote only upon request from a Member State.	A/RES/58/314, ANNEX 8. The right to co-sponsor draft resolutions and decisions that make reference to the Holy See; such draft resolutions and decisions shall be put to a vote only upon request from a Member State.

Right to make interventions during an Assembly session after only an initial (one-time) explanation or recall of relevant resolutions by the President of the Assembly	A/RES/52/250, ANNEX 6. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly.	A/RES/58/314, ANNEX 3. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly.
Priority seating before other observers <b>NOTE Distinction in BOLD [emphasis added]</b>	A/RES/52/250, ANNEX 7. Seating for Palestine shall be arranged immediately <b>after non-member States</b> and before the other observers; and with the allocation of six seats in the General Assembly Hall.	A/RES/58/314, ANNEX 9. Seating for the Holy See shall be arranged immediately <b>after member States</b> and before the other observers when it participates as a non-member State observer, with the allocation of six seats in the General Assembly Hall.
Capacities denied	A/RES/52/250, ANNEX 8. Palestine shall not have the right to vote or to put forward candidates.	A/RES/58/314, ANNEX 10. The Holy See shall not have the right to vote or to put forward candidates in the General Assembly.

**Source:** CRS, from United Nations General Assembly resolutions.

**Notes:** “Regular observer status” enjoyed by the Holy See from 1964 to 2004 has been described in Article 7 of the Convention on the Representative of States in their Relations with International Organizations of a Universal Character, done March 14, 1975 and not yet in force (nor signed by the United States). Article 7 provides “The functions of the permanent observer mission consist inter alia in: (a) ensuring the representation of the sending State and safeguarding its interests in relation to the Organization and maintaining liaison with it; (b) ascertaining activities in the Organization and reporting thereon to the Government of the sending State; (c) promoting co-operation with the Organization and negotiating with it.”

\* Right of reply is a right to speak in reply to a previous speaker’s comment.

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